

(2015) 07 SHI CK 0071

In the High Court Of Himachal Pradesh

Case No : CMP(M) Nos. 1330 and 1331 of 2014

State of Himachal Pradesh and Others

APPELLANT

Vs

Devinder Kumar and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 22
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 5

Citation : (2015) 07 SHI CK 0071

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : D.S. Nainta, Addl. A.G. and Pushpinder Jaswal, Dy. A.G., for the Appellant

Final Decision : Disposed off

Judgement

Dharam Chand Chaudhary, J—Smt. Devakoo, arrayed as respondent No. 10 in the main appeal, was one of the petitioners in reference petition No. 11 of 2008. She died on 12.3.2010 leaving behind the legal representatives named in para 2 of the application CMP (M) No. 1330 of 2014. The factum of her death was neither brought to the notice of the trial Court either by the surviving petitioners or her legal representatives nor any steps taken for her substitution. To the contrary the reference petition came to be decided along with batch of petitions vide common award passed on 1.12.2012 in reference petition No. 1 of 2008 and its connected petitions including reference petition No. 11 of 2008 filed by deceased Devakoo along with nine other petitioners therein. The factum of her death came to be disclosed on 5.12.2013 by Shri O.C. Sharma, Advocate, who had put in appearance on behalf of respondents No. 1 to 9. Proposed legal representatives are duly served, however, they opted for not putting appearance. On behalf of respondents No. 1 to 9 also, there is no appearance nor any reply to these applications filed.

2. The question for adjudication as arisen in these applications is as to what is the impact of death of deceased respondent Devakoo and non-substitution of her legal representatives in these proceedings. The law in this regard is no more res-integra as this Court in Collector Land Acquisition NHPC versus Khewa Ram and others, Latest HLJ 2007 (HP) 270, after taking into consideration the provisions contained under the Land Acquisition Act and also under Order 22 of the Code of Civil Procedure, has held that a reference petition under Section 18 has to be answered by the Court and in case the claimant does not appear despite notice, he do so at his own risk. In the event of the sole claimant died during the course of proceedings and the Court unaware of his death answered the reference on the basis of the material available on record, in an appeal either filed by his legal representatives or the acquiring authority, the award has to be set aside and the proceedings deemed to have been abated, of course subject to the consideration of the question of setting aside the abatement on condonation of delay, however, only by the reference Court and not by the appellate Court. In a case where there are more claimants or where more than one petition (a batch of petitions) decided by a common award, death of one of the claimants during the course of proceedings do not render the award passed on common evidence led by all the parties a nullity and the legal representatives can even be brought on record during the pendency of the appeal also. The relevant portion of the judgment supra reads as follows:

"13. The question that next arises is as to what happens if the claimant has died during the proceedings. This can also happen under various circumstances, some of which are being dealt with hereunder:

a. In case there is only one claimant in an isolated case of land acquisition and the claimant dies, then obviously if the court is unaware about the death of the claimant, it will proceed to decide the reference on the material placed on record before it. In such a case, if either the legal representatives of the claimant or the acquiring authority files an appeal, then the award of the District Judge will have to be set aside and the reference proceedings deemed to have been abated. The questions whether abatement should be set aside and whether the delay, if any, should be condoned are questions to be decided by the District Judge alone and not by the appellate court.

b. However even in the aforesaid situation, the award cannot be said to be nullity since the reference court is bound by law to answer the reference. In case none of the parties is aggrieved, the legal representatives can execute the award in accordance with law.

c. In cases where there are more than one claimants and each is owner of a separate share, then the death of one of the claimants can never render the award to be a nullity. The award is answered in favour of all the claimants. Therefore, in an appeal filed either by the claimants or by the acquiring authority, the legal representatives of the deceased claimant can be brought on record even during the course of the appeal and it is not necessary to refer the matter

back to the reference court.

d. Where there are more than one petitions and they are decided by a common award and the sole claimant in one of the petitions has died during the pendency of the reference proceedings, the entire award cannot be termed a nullity. Since the award is a common award based on common evidence led by all the parties, the legal representatives of the deceased can be brought on record during the pendency of the appeal also.

e. In cases(c) and (d) above, the abatement, if any, will be qua the deceased and the entire proceedings will not abate. In both these cases the legal representatives can be brought on record even during the pendency of the appeal."

3. The present is a case, which is covered by (b) and (c) of para 13 of the judgment supra, as Devakoo was not the only petitioner in the reference petition but nine other persons including her daughters Smt. Reshmu Devi, Smt. Leela Devi and Smt. Sheela Devi, being co-owners of the acquired land, were also the petitioners therein. Above all, the reference petition, they preferred has been decided by a common award passed in a batch of petitions on the basis of common evidence available on record. Therefore, irrespective of the death of deceased respondent Devakoo during the course of the proceedings in the reference petition in the trial Court, the question of abatement of the appeal and substitution of her legal representative can be gone into by this Court in the present appeal. Since other petitioner and particularly her daughters, petitioners No. 7 to 9 were there on record to represent the estate of the deceased petitioner-respondent and to pursue the petition, therefore, the question of abatement does not arise. The proposed legal representatives of deceased respondent Devakoo named in para 2 of the application [CMP(M) No. 1330 of 2014] are otherwise also required to be brought on record being entitled to receive the compensation in respect of the acquired land to the extent of their share and also to straighten the record.

4. The application, no doubt, has been filed beyond the period of limitation. The delay, however, stands explained from the contents of another application [CMP(M) No. 1331 of 2014] filed under Section 5 of the Limitation Act.

5. I, therefore, allow both the applications and on setting aside the abatement of the proceedings, order to substitute the proposed legal representatives named in para 3 of the application, CMP(M) No. 1330 of 2014. Since proposed legal representatives 10(a) to (c) are already on record as respondents No. 7 to 9, in the main appeal, therefore, proposed legal representatives (d) to (i) are ordered to be impleaded as respondents No. 10(a) to 10 (f) in the main appeal. Necessary corrections be made in the records accordingly. Amended memo, in terms of this order be also filed within two weeks. Both the applications stand disposed of.

An authenticated copy to learned trial Court for making necessary corrections in

the records in terms of this order.